

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Toshio MATSUMOTO et al.

Group Art Unit : 1771

Appl. No. : 10/577,426  
(National Stage of PCT/JP2004/015941)

Examiner : Hai VO

I.A. Filed : October 27, 2004

Confirmation No. : 4734

For : POROUS CALCIUM PHOSPHATE CERAMIC AND METHOD FOR  
PRODUCING THE SAME

**ELECTION WITH TRAVERSE**

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop AMENDMENT  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

This is in response to the requirement for restriction under 35 U.S.C. § 121 and § 372 mailed from the U.S. Patent and Trademark Office on May 18, 2007. Inasmuch as the one-month shortened statutory period for reply is set in the Office Action to expire on June 18, 2007, this response is being filed by the initial due date for response. This is an express request for any necessary extension of time and authorization to charge any required extension of time fee or any other fees which may be required to preserve the pendency of the present application to Deposit Account No. 19-0089.

### **RESTRICTION REQUIREMENT**

The Examiner has required restriction under 35 U.S.C. 121 and 372 to one of the following inventions:

- I. Claims 1, 2, and 4-8, allegedly drawn to a porous calcium phosphate.
- II. Claims 9-12, and 14, allegedly drawn to a method of making a porous calcium phosphate.

### **ELECTION**

In order to be responsive to the requirement for restriction, Applicants elect, with traverse, the invention set forth in Group I, **claims 1, 2, and 4-8**, drawn to a porous calcium phosphate.

### **TRAVERSE**

Notwithstanding the election of the claims of Group I, in order to be responsive to the requirement for restriction, Applicants respectfully traverse the requirement.

Applicants note that this application is a national stage, and thus under unity of invention practice, the Examiner must establish that the claims lack unity of invention under PCT Rule 13.1 and 37 C.F.R. § 1.475. The Restriction Requirement asserts that JP 03-065579 teaches the common technical features of the claims and stops at this point, failing to show how the claims of the present invention are anticipated or obvious over JP 03-065579. Thus, Applicants respectfully submit that the Restriction Requirement fails to comply with PCT Rule 13.1 and 37 C.F.R. § 1.475 for failure to make the proper showing.

Additionally, Applicants respectfully note that the Examiner's conclusions relating to a lack of unity of invention are based entirely upon a finding that the claimed subject matter is found in the prior art. Accordingly, Applicants respectfully submit that the Office will be required to withdraw the Restriction Requirement upon reciting subject matter that is not disclosed in the prior art. Still further, Applicants respectfully reserve the right to rebut any statements that the Office has made relating to the disclosure of the present invention in the prior art.

If there are any comments or questions, the undersigned may be contacted at the below-listed telephone number.

Respectfully submitted,  
Toshio MATSUMOTO et al.

A handwritten signature in black ink, appearing to read "Sean H. Bernstein".

Bruce H. Bernstein  
Reg. No. 29,027

June 18, 2007  
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